

3 Property Rights and Islamic Economic Approaches

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In the past four decades, a growing segment of the political movements in the Muslim countries of the Third World has turned to Islamic ideology as its guiding principle (Sivan 1985, Enayat 1982, Rodinson 1978¹). The Islamic popular movements strive to establish an 'Islamic economic system'. The characteristics of this ideal economic system are elaborated by 'Islamic economists' in the vast and diverse literature known as 'Islamic economics'.² An Islamic economic system is regarded by its proponents as a just and humane social order, in accordance with the teachings of Islam. This social order is 'neither capitalist nor communist, but it stands on its own and combines all the good features of a healthy and balanced society' (Mannan, 1986, pp. 346-7). The definition of the Islamic economy as a system of social relations of production remains, however, far from clear. The most significant theoretical controversy among Islamic economists is about the limits of private property rights in a 'true' Islamic economy.

This controversy reflects the populist orientation of the Islamic movements and the corresponding methodological eclecticism of Islamic economics. Islamic movements attempt to mobilise the poor, the well-to-do petty bourgeoisie and even certain strata of the bourgeoisie under the banner of Islamic justice. Islamic movements aim to establish a 'third path' by objecting to the inequities in the existing capitalist regimes while keeping a clear distance from the socialist movements. The definition of property relations in the idealised Islamic economic system, in contrast to these relations in capitalism and socialism, has become the key element in differentiating this 'third path' from the existing economic systems. Islamic economists are put to this task not only by their Marxist and mainstream economic critics but also, and more importantly, by the political imperatives of the movements which demand a platform addressing the existing economic inequities, on the one hand, and the fear of

socialist expropriation of property, on the other.

Methodological eclecticism at the theoretical level is a prerequisite for populism at the political level. The methodology of Islamic economics is a juxtaposition of Neoclassical-Keynesian analysis with a world view shaped by utopian thoughts and bounded by Islamic scholasticism.³ Thus, Islamic economics fails to provide a unique methodological framework ('paradigm') for the study of the social relations of production. It also fails to establish the characteristic elements of distinction between an Islamic economy and capitalism and between the transitional and developed forms of one with those of the other (see Behdad, 1991). (The line of demarcation with socialism, as I will demonstrate in this paper, is clear.) In the absence of a unique theoretical framework, the various ideological orientations in Islamic political movements seek to sanction, promote, or forbid certain economic practices and norms of conduct by interpreting the teachings of Islam in the context of the social conditions of modern Muslim countries. So, the determination of the extent of private property rights, or the limits on freedom of action of the owners of property in the idealised Islamic market (which is the nexus of social relations of production), becomes the *problématique* of Islamic economics.

Islam teaches compassion for the poor and destitute⁴ and condemns the wealthy and arrogant.⁵ Islam also praises worldly and material preoccupations, leaving no doubt that the quest for material possession is not only accepted, but also respected. Thus, Islam is open to a wide range of interpretations on property rights. It can serve as the ideology of radical populist movements longing for equality and redistribution of wealth.⁶ It can also be the means of justifying concentration of wealth and existence of acute inequalities.⁷

The 'true' Islam established in any society as the result of the current Islamic resurgence will undoubtedly be a reflection of the balance between contending social forces. The resolution of the property rights issue, therefore, must be viewed in the context of the class struggle within any given Islamic society. My contention in this paper is to show that Islamic ideology itself would, however, impose definite limits upon the resolution of the property rights issue. These limits stem from Islamic jurisprudence, an integral element of Islamic ideology.

Because Islam has explicitly and extensively addressed worldly

affairs, particularly economic and commercial relations, Islamic thought has been endowed by fourteen centuries of jurisprudential studies and judicial practices. Thus, the debate on property rights in Islamic economic thought is not only scholastic in the sense that these rights must be in accordance with God's revealed wisdom, which may be interpreted differently in different times and places. This debate is also jurisprudential since conformity with the Islamic legal tradition must be established. I maintain, in agreement with Maxime Rodinson (1978), that the interpretation of property rights according to Islamic Law (*shari'a*) and jurisprudence will counter any radical tendencies in Islamic reformist⁸ movements. I will show that the framework of property relations proposed by Islamic reformers is at most that of a capitalist economy with an interventionist-welfare state, and the jurisprudential sanction for even such a non-radical change would require a radical reform in Islamic jurisprudence.

I will limit my analysis only to the works of contemporary Islamic economists; therefore, the views of Islamic jurists (*mujtahids* and *faqih*s⁹) and political leaders of past or present are not reviewed here. In this paper I assume some familiarity with the fundamentals of Islamic jurisprudence.

GOD'S ULTIMATE OWNERSHIP

There is no disagreement among Islamic economists in the belief that the ownership of property belongs to God (Siddiqi, 1981, p. 7). The Quran is explicitly clear about God's ownership. 'Unto Allah (belongeth) whatsoever is in heavens and whatsoever is in earth' (Quran, II:284.) The same or similar verses are repeated elsewhere in the Quran. (For example, see the Quran II:255, III:129 and XXII:64). Yet, the right of the individual to hold property is accepted and respected. The dichotomy of God-Man ownership is reconciled by the notion of trusteeship of Man and Man's accountability to God (see *inter alia*, Siddiqi, 1981, p. 7 and Naqvi, 1981, p. 77). 'Hast thou not seen how Allah hath made all that is in the earth subservient unto you?' (Quran, XXII:65). And, 'Believe in Allah and his messenger, and spend of that whereof He had made you trustee'¹⁰ (Quran, LVII:7).

God's ultimate ownership is the source of the ambiguity in property rights in Islam.¹¹ God's ultimate ownership implies that His

ownership supersedes the right of the individual to property. Thus, a state representing the will of God, i.e., an Islamic state, may impose limits on individual property rights. The restrictiveness of these limits will depend upon the extent of interference of individual property rights with the realisation of God's will in the society of Muslims. The Islamic state will be the judge of interference and the abrogator of the individual property rights. As long as the state is not Islamic, the issue of determination of limits of property rights according to Islam is merely academic. In the established Islamic states (e.g., Saudi Arabia, or prior to the secularisation of state in the present century, in most Muslim societies) where the existing property relations have gained historical legitimacy, the issue is confined to adjudication in the cases of conflict in the property rights of individuals. However, the problem becomes a highly critical political issue when, as in Iran, the establishment of a new Islamic state is the outcome of a populist revolution under the egalitarian banner of Islamic ideology. The problem also becomes apparent when Islamic reformist movements advocate populist social changes in a society under an Islamic rule (e.g., Pakistan and Egypt).

Three general approaches may be identified on the issue of private property rights among Islamic economists. I refer to these as '*laissez faire*', 'populist' and 'populist-state control' approaches.

Laissez faire Approach

The *laissez faire* approach¹² is best summarised by Faruqi:

Islam teaches the greatest possible individualism. . . . This individualism knows no bonds except those imposed by the moral law. But when no moral violation is in evidence, Islam teaches that man may and should amass the greatest fortune he can, and these are his and his natural or adopted heirs to have, to keep and to enjoy. . . . *Man's acquisitions of wealth may have no limits in Islam. A person may amass boundless treasures. Indeed he can, theoretically at least, 'own' the whole world* (Faruqi, 1980, p. xii, emphasis added).

The moral limits according to Faruqi are that

In his acquisition of wealth, man is not to lie, or cheat his neighbour . . . [must] uphold his promise and to fulfil his

contract . . . not to steal . . . [or] exploit the destitution of his fellow men by subjecting them to work for him without full title to the fruits of their own work, as is usually the case with interest levied on borrowed capital (Faruqi, 1980, p. xii).

Charity will take care of 'poverty and destitution' and *zakat* (a wealth tax¹³) serves to 'sweeten or make innocent . . . man's enjoyment of wealth'¹⁴ (Faruqi, 1980, p. xiii). According to Faruqi, these are the limits that separate Islam from 'extreme individualism and capitalism' (1980, p. xii). He does not, however, clarify what he means by capitalism or why these mechanisms of income redistribution should be considered fundamentally different from those which are relied on in capitalist economies.

Abdul-Rauf, noting the 'obvious' difference between Islam and 'the communistic system', sees little difference between Islam and capitalism. He maintains that it is 'difficult to necessarily differentiate the system of Islam from that of capitalism unless you include in the definition of capitalism certain inherent evils' (Abdur Ra'uf (Abdul-Rauf), 1980, p. 53).

The interpretation of Faruqi and Abdul-Rauf, among others, may be justified by many verses of the Quran, numerous *hadiths* ('reliable' references to Muhammad's actions or views) and rulings of *faqihs*. The Quran, by praising charity, sanctions inequality of wealth in a way not dissimilar to the medieval approach of Christianity. The Quran states, for example, 'And covet not the thing in which Allah hath made some of you excel others. . . . (Envy not one another) but ask Allah of His bounty'¹⁵ (IV:32).

Many rulings of the past and contemporary *faqihs* also reflect this position. An interesting example is a recent ruling referred to by Abdul-Rauf (1979, pp. 14–15). After Muhammad's death, Abu Dharr, a Companion of Muhammad, challenged the luxurious life of the Ummayed governor of Syria by referring to a number of hadiths, including: 'Should this mountain of 'Uhud be turned into gold for me, I would not wish that the nightfall comes before I have disposed of it all in charity except two carats'. Uthman, the third Caliph of Muslims, fearing an uprising in Syria, sent Abu Dharr to exile, where he died. Al-Azhar, the authoritative theological school in Cairo, ruled in 1948 (nearly fourteen centuries after the incident) in favour of the Caliph. The ruling by al-Azhar was a response to the challenge of the growing populist tendency against the existing orientation in Islam. As Nowaihi points out, the proponents of *laissez faire* approach

to private property rights claim that 'there is nothing in the classical works of Islamic jurisdiction to countenance [the] limitation [on property rights] (1980, p. 74).

Populist Approach

The populist approach claims that Islam has 'reserved' the right to ownership for individuals. This implies that although the right to private property is respected by Islam, the opportunity to exercise this right must exist for every individual. That is, no one should be without property. Most notable among the adherents to this approach is Abu Sulayman (1980) who argues that equality is the economic manifestation of *tawhid* (Divine Unity), the cardinal principle of Islam.¹⁶ *Tawhid*, according to Abu Sulayman, 'is a coin with two faces: One implies that Allah is the Creator, and the other that men are equal partners' (1980, p. 14). He extends this interpretation of *tawhid* to property rights and concludes that all natural resources including land, capital and 'general circumstances' belong to the whole society, and no one can claim a bigger share than others¹⁷ (1980, pp. 14, 16–17). This 'right of priority' must be 'protected against the tyranny and despotism of capitalists, chairmen and committees' (Abu Sulayman, 1980, p. 17).

Abu Sulayman maintains that if one cannot make use of certain resources over which one has priority, one should let someone else take advantage of it without claiming a share in the income from that resource (1980, p. 17). The extra income resulting from resources beyond one's equal share must be distributed among the 'weaker members of society'. This approach to the property rights issue may imply imposition of certain ceilings on large-scale ownership and has been generally supported by even right-wing populist movements such as Ikhwan al-Muslimun (Muslim Brotherhood) in Syria and Egypt and Jama'at-i Islami (Islamic Society) in Pakistan (Siddiqi, 1981, p. 9). The position is clearly appealing to small proprietors who would like to see a limitation imposed on the accumulation of riches by the wealthy without the fear of losing their own wealth under socialism.

To Abu Sulayman, the redistribution of property (priority of use), although justified in principle, is not appropriate. He maintains that since such redistribution will be required frequently and is 'disruptive to economic activity and social relations', taxation, charity and 'modern techniques' of income redistribution are recommended (Abu

Sulayman, 1980, p. 40). This recommendation of Abu Sulayman brings him much closer to the *laissez faire* approach than his analysis may imply. The difference lies merely in the rate of taxation and the extent of coercion by the state in payment of 'charity'. Clearly underplayed in Abu Sulayman's model of Islamic society is state ownership.

Populist-State Control Approach

The 'populist-state control' approach extends Abu Sulayman's interpretation of property rights by putting the state in a central position. Sadr, a *shi'i mujtahid* from Iraq, is the main proponent of this approach (1971 and 1978). Sadr argues that God has availed the natural wealth to the society to be used for the welfare of mankind. Through ownership, individuals must carry a social role as prescribed by the Divine Revelations. Therefore, the right to private property is subject to fiduciary principle and as such it is neither natural nor irrevocable (Sadr, 1971, pp. 32–3). An Islamic ruler may limit the use of property or confiscate it if the fiduciary principle is violated (Sadr, 1978, p. 34).

Sadr's emphasis on the social character of ownership sets stricter limits on private property rights than the proponents of the *laissez faire* approach are willing to accept. Sadr, on the other hand, prescribes a more positive role for the state's right to hold property than is envisioned by the populist approach. Sadr suggests that Islam, in contrast to socialism and capitalism, prescribes 'mixed' (private and state) ownership. In Sadr's view, the contrast between property relations in Islam and those in the other two economic systems is at the level of working principles of these systems, and not in actual practices¹⁸ (1971, pp. 355–8).

According to Sadr, ownership in Islam is in three forms: state, public and private.¹⁹ (1978, pp. 63–141). State and public forms of ownership are exercised by the Islamic ruler over what Islamic law calls *anfal*. *Anfal*, in Islamic jurisprudence, includes natural resources and spoils of war. The most important examples of *anfal* are land, mineral deposits and water. Properties confiscated by the state, for whatever reason, will also come under this category.

The important implication of Sadr's view on 'mixed' ownership is legitimisation of a large state sector in the economy. This is more clearly seen when one considers Sadr's view on the responsibility of the state for maintaining a 'social balance' by providing 'an appropriate

standard of living for individuals' (Sadr, 1978, pp. 329–50). Almost all Islamic economists would uphold, as a matter of principle, the view that the state should step in when the voluntary charity of individuals is not sufficient for maintaining subsistence for the poor and destitute (for example, Choudhury, 1986, Chapter 1 and Naqvi, 1981, Chapter 8). Chapra (1980) has been explicit in specifying many functions of a modern capitalist state (e.g., creating full employment, maintaining a high rate of growth, economic stability and the real value of money) for an Islamic state. However, what sets Sadr apart from other Islamic economists is the role that he prescribes for an Islamic state in maintenance of a 'social balance'. To Sadr, there should be a 'balance in the standard of living of all members of the society' with only *minimal* differences reflecting the physical and intellectual capacities of individuals (1978, p. 331). The significance of Sadr's view on the role of state in an Islamic society may be summarised as follows:

- a) The Islamic state may legislate new restrictions on economic activities in addition to what is prescribed by the *shari'a* in order to maintain social balance in the face of historical changes in the conditions of production (1978, pp. 34 *et seq.*, 344–50).
- b) Since (according to Sadr), in an Islamic economy, the growth of individual capital is limited, where production conditions require establishment of large enterprises, such enterprises must be established and controlled by the state (1978, p. 341).

Sadr's view is controversial not only from a political perspective, but also from a jurisprudential standpoint. The extent of state intervention in the market necessary for maintenance of a 'social balance' implies strict limitations of the activity of large capital and formation of a large state sector in the economy. The economy will remain, however, capitalist in character while the state may play an aggressive role in facilitating and regulating the accumulation process. This extensive state intervention cannot be carried out based on the existing jurisprudential tradition. Legislation of new restrictions by the Islamic state opens the door to jurisprudential controversies, to which we will return in a following section.

HOARDING AND *RIBA*: THE LIMITS TO PRIVATE PROPERTY

Ultimate ownership by God sets the general constraints on private property rights. These constraints are further specified by the *shari'a* in prohibition of hoarding and *riba* (excessive gain).

Hoarding

One may not leave consumption wealth or productive capacity unused. 'That which they hoard will be their collar on the Day of Resurrection' Quran (III:180). *Zakat* and charity are to discourage and reduce accumulation which may result in hoarding. Prohibition of hoarding, beyond discouraging abstinence in consumption of wealth and 'excessive' personal accumulation, has been limited in two principal cases in tradition. One is the case of hoarding by merchants as a way of cornering the market. The state may force the hoarder to sell the hoards at a 'fair value' (Ibn Taymiya, 1982, pp. 32-3 and Mannan, 1986, pp. 153-5). The other, and more controversial, case is hoarding land by leaving it unused, with which we will deal in the next section. Some Islamic economists have, however, attempted to extend the prohibition of hoarding by considering any unused capacity of production as hoarding. Extending the definition of hoarding from the sphere of circulation to the sphere of production is justified by Sadr's attempt (1971, 1978) to reinterpret Islamic jurisprudence in the light of changing historical circumstance in the Muslim societies from Muhammad's time. If any output level short of maximum capacity is regarded as hoarding, then the optimum output of a firm in an Islamic economy is its second break-even point (where the demand curve intersects the average cost curve from above).²⁰ Then, firms making an economic profit by producing less than the 'Islamic optimum output' could be regarded as hoarders. If hoarding is unlawful, then it must be the duty of the state to eliminate it when it does occur. Thus, prohibition of hoarding may justify appropriation of 'unused' private wealth by the state. This position is consistent with Abu Sulayman's notion of 'priority rights'. There is, however, little in tradition (Muhammad's conduct of affairs) to point to such conclusions, and there are few who extend the definition of hoarding to such limits.

Riba

Riba, literally means 'over and beyond'. The Quran explicitly condemns *riba*. 'Those who swallow *riba* cannot rise up save as he ariseth whom the devil hath prostrated by [his] touch'²¹ (Quran, II:275). No transaction may bring a party anything beyond the 'fair exchange' value (Abu Sulayman, 1980, pp. 22-3). The most clear case of *riba* is usury, but it may be extended, and it has been, to include other forms of transaction, as we will see below.²²

The concept of fair exchange value may appear similar to Aquinas' 'just price'. (See O'Brien, 1920, p. 102 *et seq.*) Fair exchange value in Islam is, however, neither socially determined nor administratively regulated. In response to a request to control prices, Muhammad said: 'God is the Taker, the Disposer, the Succourer and the Controller of prices. I very much hope that when I meet God no-one will claim against me for an injury I have caused him for blood or property' (Ibn Taymiya, 1983, p. 35). Fair exchange value, therefore, cannot mean other than the market return to labour and capital.²³

That labour creates value is clear enough in Islamic thought. The Quran goes as far as stating, 'And that man hath only that for which he maketh effort' (LIII:39). This and similar statements in the Quran have provided the grounds for some scholars to raise questions about legitimacy of return on property (Abu Sulayman, 1980, pp. 17-19). Most Islamic economists, however, in agreement with the Islamic jurisprudential tradition, interpret 'effort' in the general sense of the word, including the effort of entrepreneurs in their profit-making activities. The Quran's explicit sanctions of gains from trade ('Allah permitted trading and forbidden *riba*', (II:275)) and Muhammad's frequent praise of merchants (he was one himself)²⁴ point to the indisputable legitimacy of profit in Islam. What distinguishes profit from *riba* is that profit is a return on capital where such return is not fixed in rate and is subject to risk.²⁵ Sadr, however, differs with this view. He maintains that capital in the form of means of production can receive no more than the rent for such means and has no claim over the final output. To Sadr, however, such a claim cannot be made by labour either. Since production is no more than reshaping the raw material, the final product belongs to the owner of raw material (Sadr, 1978, pp. 200-10). Sadr makes a great deal from this somewhat inverted physiocratic notion of production in order to establish the superiority of an Islamic economy to capitalism and socialism. There is, however, little significance in his distinction, at least in

modern economies, where capital provides not only the means of production but also the material of production.

The specific limits of property rights as they may be applied to the ownership of land and capital must, therefore, be determined in light of the prohibition of hoarding and *riba* and within the context of God's ultimate ownership.

LIMITATION ON THE RIGHTS TO LAND AND CAPITAL

Since the Quran, in most cases, only refers to the general guidelines on the limits and responsibilities of ownership, the main source for jurisprudential rulings on property rights is Muhammad's tradition. This, however, reflects the tribal-mercantile society of Mecca and Medina with a small agricultural preoccupation and even smaller manufacturing activities.²⁶ Therefore, the interpretive value of tradition in contemporary societies is severely limited. This limitation has given rise to a number of debates on the specific limits of property rights in Islam.

On Land

The most controversial debate has been on the ownership of land, for the rather obvious reason that Islamic societies have been, and still are, essentially agrarian with significant tensions around land ownership. Land is the most obvious gift of God. 'Lo! the earth is Allah's. He giveth it for an inheritance to whom He will' (Quran, VII:128). On this basis, plain land (land in its natural form) may not be owned by individuals. There is little disagreement on this issue among Islamic economists. Plain land, according to Sadr, is under public or state ownership (respectively, for usable and unusable land) (1978, pp. 62–117). One may claim priority in use of plain land by improving it with one's labour and capital. This priority, however, may be conditional (*a la* prohibition of hoarding) to the continued use of land. Sadr is among the scholars who emphasise the conditionality of continued land use. He quotes a *hadith* of Muhammad stating, 'Land belongs to God, whoever leaves it uncultivated for three consecutive years will have it taken away and given to someone else'. (Sadr, 1978, p. 43. The issue is further elaborated in pp. 101–6, 114 and 152–5 of the same volume.)

The land ownership issue becomes less clear when land rent and

sharecropping are considered. Is rent on land permitted by Islam? There is agreement among Islamic scholars that Islam does not permit rent for plain land (Siddiqi, 1981, p. 15). Abu Sulayman relies on the following *hadith* of Muhammad to prove that land rent is unlawful: 'He who has land should cultivate it. If he will not or cannot, he should give it free to a Muslim brother and not rent it to him' (1980, p. 9). Since 'having' land would imply having improved land, as plain land may not be 'had', this may be interpreted as a limitation on ownership of land beyond the amount one can cultivate and a justification for redistribution of large land holdings (Mannan, 1986, p. 80). Sheikh maintains that '[a] person can possess only that much land which he can himself cultivate' (1961, p. 181). The surplus land must be 'surrender[ed] to the State'.²⁷

There are, however, other *hadiths* which explicitly allow land rent. Sa'd Ibn Waqqas, a Companion, is quoted to have said, 'We used to rent land and pay the owner as rent the produce grown on the banks of irrigation canals. The Prophet prohibited this and ordered us to pay rent in gold or silver' (Choudhury, 1986, p. 9). Clearly, it is not the rent but rent in kind that is prohibited here. The payment of rent is considered lawful by most Islamic economists as long as some improvements have been made on the land.²⁸ To Choudhury, rent on improved land is a rightful return to value created by work and capital (1986, p. 9). To Sadr, rent on improved land is legitimate since it is the cost of depreciation of work done and capital expended for its improvements (1978, p. 245). As Siddiqi points out, however, it is clear that rent on improved land is almost always higher than depreciation (1981, p. 15). If so, then the rent in excess of depreciation is *riba*. On this basis some Islamic economists (Mannan, 1986, p. 80 and Sheikh, 1961, p. 181) regard rent even on improved land unlawful, a position which others view as 'dogmatic' (Siddiqi, 1981, p. 15).

Sharecropping is considered as unlawful by a small number of Islamic economists, including Sheikh (1961), Yusuf (1957), and Abu Sulayman (1980), and unlawful by most others. Sheikh's argument against sharecropping is theoretical rather than jurisprudential. He argues that sharecropping and rent on land would hinder economic development and creation of employment in an Islamic society where the rate of interest 'is made to fall to zero by a religious ordinance or legislation' (1961, p. 180). Sheikh maintains that in such circumstances 'moneyed people would begin to buy land and live on its rent. . . .'²⁹ Thus, in Sheikh's view, although profit sharing is per-

mitted by Islam in industry and commerce, profit on land in the forms of rent or sharecropping is prohibited.

Yusuf's and Abu Sulayman's arguments are jurisprudential. Abu Sulayman relies on this *hadith* of Muhammad to support his position: 'Whoever would not abandon sharecropping he is at war with Allah and his Prophet' (1980, pp. 20–1). It is, however, well known that Muhammad himself engaged in sharecropping upon his victory in Khaybar, where he 'let the Jews to stay on the land, cultivate it and share one-half of the crops with the Muslims'. Abu Sulayman explains the contradiction between these two traditions by noting that in Khaybar, Muhammad engaged in sharecropping only with non-Muslims. It must, however, be noted that in the first statement that Abu Sulayman quotes, 'sharecropping' is the translation of the Arabic word *mukhabara*, meaning only land, and not seed, is provided by the owner of the land. The prevalent form of sharecropping sanctioned by Islamic law is *muzara'a*, when the owner of land provides seeds as well as land.³⁰ Abu Sulayman's objection to sharecropping is, therefore, relevant only to a special case and, as such, is not as significant as he makes it appear.

The restrictions suggested by various Islamic scholars on land utilisation, land rent and sharecropping are regarded by these scholars as the egalitarian dimension of Islam in preventing exploitation of the poor by the wealthy and arrogant. This view, the jurisprudential queries notwithstanding, must be evaluated in light of the relations of production in an Islamic economy. To Islam, wage labour is 'perfectly normal' (Rodinson, 1978, p. 16). Labour is hired by the employer under a contractual agreement with the worker. The only restriction is that wages must be specified in amount and not be subject to uncertainty (*gharar* or *maysir*) (Rodinson, 1978, p. 16). According to Muhammad, 'The wages of labourers must be paid to him before the sweat dries upon his body'. And, 'the best earning is that of labourer provided he does his job with care and regard for his employer' (Mannan, 1986, pp. 116–17). With the acceptance of wage labour there is no limitation on the extent that capital or land can be used in the production process. Even if the restriction that some Islamic economists suggest on the land utilisation, land rent and sharecropping were fully true from a jurisprudential view, their implications would be the encroachment of capitalist relations of production upon the pre-capitalist relations in the rural sector. Muhammad's prohibition of rent in kind instead of payment of cash (noted above) appears to point in the same direction. The effects of

the capitalist transformation of the rural sector on the development of an underdeveloped economy, although an interesting theoretical issue, is not what Islamic economists have in mind when they insist on such restrictions. These restrictions would not reduce inequalities in a modern market economy, where such restrictions are mostly not relevant, in any case.

On Capital

Islamic economists face an apparent dilemma when they deal directly with capital. The authors are confronted with the problem of private enterprise *vs.* social justice, both of which have received particular attention in the Quran and tradition. All authors believe the explicit restrictions of Islam on the use of capital and on the conduct of business, plus the behavioural norms based on Islamic values, would resolve the problem. Prohibition of usury, monopoly, hoarding and speculation are the commonly accepted Islamic restrictions on business practices.³¹ These restrictions, with the exception of the first, are not, however, clearly defined to have operational significance in modern economies. The existing limitations on the activity of capital in the advanced capitalist countries are more clearly defined and more effectively imposed than Islamic jurisprudence would allow. For example, labour laws dealing with the right to collective bargaining, minimum wage rate, child labour, and maximum hours of work would confront particular difficulties in Islamic jurisprudence.³² The contractual agreement between an employer and a worker may not be constrained by a third party (the state) as long as the two parties fulfil their obligations. Similarly, some other forms of state intervention practiced in the developed and underdeveloped economies may not be legitimate according to Islamic jurisprudence. For example, many forms of industrial and trade regulations and licensing by the state may be challenged by Islamic laws.³³ At most, Islamic legal restrictions on business practices can amount to no more than the anti-trust regulations, enforced in the advanced capitalist economies for nearly a century.

The Islamic norms of conduct are, however, expected to limit profit to no more than 'normal', 'just', or 'fair' profit in a market structure that is purely competitive³⁴ (Mannan, 1986, p. 63 and Siddiqi, 1981, p. 59). For example, according to Siddiqi, Islamic entrepreneurs would maximise profit within the constraints set by Islamic justice (1981, p. 56). That is, entrepreneurs 'would not be

maximising their profits if . . . by lowering their profit margins they can further the good of the society . . .'. To Naqvi (1981, p. 64), the ethical considerations in an Islamic market result in 'interdependence of utility functions and production functions'.³⁵ These views resemble those of the proponents of the 'social responsibility of business' in the capitalist economies. (See, for example, Almeder, 1980.) The paramount question is, then, to what extent the ethical or social responsibility of entrepreneurs can be left to their own conscience and how and to what extent the state can or should interfere in the market. In more realistic terms, the issue will centre upon the forms and extent of the state's intervention in market economy (see, for example, Chapra, 1980 and Naqvi, 1981) and as such capital may confront either more or less regulation in an economy which is capitalist in character.

Islam permits partnership (*musharaka*) and profit sharing (*mudaraba*). (See Saleh, 1986, pp. 91–4, 101, 114 and Siddiqi, 1985.) Profit sharing is encouraged, particularly as a means of channelling money capital into economic activities in the face of prohibition of interest payments. Interest-free Islamic banks³⁶ or individuals may enter a profit-sharing contract with a company or with individuals. Under a profit-sharing contract, the owner of money may receive a specific percentage (and not a specific amount, in which case it would be considered *riba*) of the profit that the 'borrower' will make during a given period. Since the profit of an enterprise is subject to risk, the 'lender' may receive profit or may incur a loss on the original capital. The arrangement is closely similar to a joint stock company where stockholders will receive dividend if the company makes profit and will lose all or part of their capital if the company incurs losses.

There is no specified limits in the *shari'a*, according to any school of Islamic jurisprudence, on the amount of capital that an individual or a company can possess or the amount of profit that may be earned. Even scholars like Sadr, who on an abstract level reject risk bearing as a justification for profit and see profit justifiable only if it is a return to entrepreneurial activity, stand to approve profit sharing under the *mudaraba* arrangement, even though the owner of capital has not done anything but take risk.

Mudaraba is seen by Islamic economists as a means for encouraging cooperative arrangements in an Islamic economy. Therefore, any 'misuse' of *mudaraba* as a way for 'excessive' accumulation of capital is regarded as *riba* by some Islamic economists. For example, Abu Sulayman maintains 'share holding could be understood as a

means of encouraging movement of capital whenever there is a man without capital. . . . ' (1980, p. 24). But even this principle, if upheld, does not prevent an owner of capital from providing capital to tens, of 'men' without capital to share the profit that results from their activities. Abu Sulayman, however, argues that share holding 'was not meant to open a side-door for exploitation and false private claims' (1980, p. 31). This position is similar to the objection to sharecropping or land rent. If there is no objection or limit to the use of capital in employing wage labour in market activities, one may say that Abu Sulayman is concerned with opening the side door when the front door is wide open.

JURISPRUDENTIAL REFORMISM, OR HERESY?

Abu Sulayman, and more generally the Islamic economists in the 'populist' tendency, confront a serious dilemma. That is, the strictest interpretation of Islamic *shari'a* would not prevent rapid accumulation and high concentration of capital in a market economy, even in an underdeveloped one. These reformer-scholars envision a market economy comprised of small farmers, merchants, and artisans, where those who are better off may give a hand to those who are less fortunate in the form *muzara'a*, *mudaraba* or even charity and alms. This is the utopian picture of a pre-capitalist society minus the landlord and all the other unpleasant features. In such an economy, business will be conducted in 'a well-maintained market' as in the time of Muhammad when 'no monopoly was allowed, no unfairness or cheating was permitted [and all] opportunistic speculation and ill-deals were ruled out'³⁷ (Abu Sulayman, 1980, p. 30).

The 'populist-state control' tendency goes one step beyond the latter position by prescribing a much larger role for the state. The extent to which a large state sector and an interventionist state would obstruct or facilitate private accumulation of capital in a market economy would depend on the class character of the state. That, of course, is a political question. The more interesting question in the study of the reformist tendency in Islamic economics is the legitimacy of these reforms in the context of Islamic jurisprudence. Islamic economists are well aware of the constraints they confront in acquiring jurisprudential sanction for their reforms to the extent that these reforms are in conflict with the traditional views of *mujtahids*. Medhat Hassanein in an opening statement to a conference of Islamic economists in April 1968 said:

In any battlefield, seeking victory depends on three elements: the soldier, the officer and the armament. . . . In the first half of this century, substantial progress was made in preparing a truthful . . . soldier. . . . But [this soldier] has been fighting . . . with obsolete, 13th century-fashioned weapons. . . . The officers have lately realized the problem and are now pleading for building the modern equipment factory. . . . They possess the modern technique, but the tools are in the hands of *mashayekh* (the traditional religious leaders), and there exists a wide gap between the two. . . .

The traditional *ulama* (the religiously-learned) for their part look upon the introduction of modern techniques with suspicious doubt. Their preferred ways of approaching problems are outmoded and no more effective (1980, p. 2).

The '13th-century fashioned weapon' is no less than Islamic jurisprudence, the guardian of which are *ulama* and *mashayekh*, or in correct terminology, *mujtahids* or *muftis*. What Hassanein and other Islamic scholar-reformers are suggesting is a reform in Islamic jurisprudence. But many elements of such reforms amount to abrogation of Muhammad's tradition and the consensus of great *mujtahids* of the past and will be regarded as *bid'a* (literally, 'innovation', and in this context, 'revisionism') which is heresy (Aghnides, 1969, pp. 30, 120). Such a reform would be possible in any one of the schools of Islamic jurisprudence only if a consensus is formed among the existing *mujtahids* of that school, agreeing upon the jurisprudential implications of the modern conditions of life in an Islamic society.

Sadr is the only prominent *mujtahid* who has stepped in this direction by challenging the established jurisprudential view about Muhammad's tradition.³⁸ Sadr maintains that the actions of Muhammad must be viewed in their historical context, and, as such, they may not be regarded as unchangeable (1978, pp. 34–5). This in itself is not new. What is new in Sadr's analysis is the application of this approach to the specific realm of economic activities, where he maintains the Islamic state has a 'free legislative realm' for achieving 'social balance'. According to Sadr, in Muhammad's time, the means of production were limited, and 'excessive' utilisation of natural resources was not possible; therefore, many economic activities of individuals were approved, or were not objected to, by Muhammad (1978, pp. 57–60). With the advance of technology, Sadr argues, owners of means of production in a capitalist economy can employ many workers and make extensive use of natural resources. According

to Sadr, this cannot be sanctioned by Islam, since only 'utilisation [of natural resources] by direct labor is legitimate' in Islam. Therefore, Sadr argues that what may appear legitimate according to tradition is not in fact in accordance with Islam in the modern economic condition.

Sadr points out quickly here that his view should not be regarded as some form of Islamic socialism. He maintains that he is pointing to emergence of a 'third pole' by rejecting both socialism and capitalism. In fact his economic model suggests a capitalist market with an interventionist government which nationalises large enterprises and maintains a market composed of many small firms. These small firms, by acting in accordance with the Islamic principles of justice and compassion, will never grow in size. On the theoretical level, Sadr has made what one may call a Sismondian-Saint Simonian synthesis: a centrally planned welfare state with extensive government ownership in a market economy composed of many small private enterprises which would behave according to the idealised Islamic norms of conduct. To Sadr, capitalist relations of production – as long as they are within the confines of a market with small, non-oligopolistic enterprises and do not result in 'excessive' accumulation of profit – are legitimate. The state will complement and regulate the private sector. In this sense he is certainly correct when he claims he is not suggesting 'some form of socialism'. Sadr is merely suggesting an idealised market economy where the accumulation process in the private sector would be regulated and limited by the state.

Sadr's model of an Islamic economy is, of course, within the realm of possibilities *only* if the political obstacles in disarming the existing oligopolistic structure in the private sector of the economy and the emphasis on the practice of idealised Islamic behavioural norms are overlooked. These limitations are less serious in the economies which are still in their earlier stage of capitalist development, especially if, as in the oil exporting countries, the state has a major source of revenue other than taxation.³⁹ The Libyan, Algerian and Syrian economies resemble, to a great extent, the model of Sadr, except they (especially the latter two) lack the necessary 'Islamic spirit'. As the result of the 'un-Islamic' capitalist accumulation, the growing bourgeoisie in these economies (again, especially in the latter two economies which are more advanced in their capitalist development) is challenging the extensive role of the state in the economy. Whether, or how, the type of market structure suggested by Sadr may be sustained in the face of the ongoing capitalist accumulation in

the private sector of the economy is an issue beyond the scope of the present analysis. What we are concerned with here is whether Sadr's economic model is consistent with Islamic jurisprudence.

The authority here is the existing community of Islamic jurists. Since Sadr is a *shi'i*, his views are ignored by the *sunni* schools of jurisprudence, who view *shi'ism* itself on the border line of Islamic heresy. Iran is the only Muslim country where *shi'ism* is the dominant sect.⁴⁰ In post-revolutionary Iran, when the restructuring of the economy became, and remains a heated issue, a strong faction in the Islamic Republic took on the 'populist-state control' approach of Sadr.⁴¹ For the past ten years, the political debate has turned into a jurisprudential confrontation. The prominent Iranian *mujtahids* (including Ayatollah Kohii who resides in the Najaf *shi'i* center in Iraq), with the exception of Khomeini, have opposed the 'populist-state control' tendency on jurisprudential grounds. The main objection of these *mujtahids* is to the limitation of private property rights by the Islamic state. This position is supported by the propertied class, the most vocal elements of which are the bazaar merchants who traditionally have had close ties with the Islamic hierarchy. Although the 'populist-state control' tendency has been the dominant faction with the Islamic Republic of Iran, this faction has not succeeded in establishing the legal foundations for carrying out its policies. The charge of heresy by the community of prominent *mujtahids* is too serious to be ignored by a regime which seeks its legitimacy in the guardianship of the faith. The political-jurisprudential entanglement continues in Iran, while in the midst of the chaotic economic conditions a decentralised, yet lucrative, state clientalism is giving rise to a rapid accumulation of capital for those who have close ties with the regime. With the lost revolutionary momentum, and the growing political and economic power of the propertied class, the populist dimension of the 'populist-state control' tendency has abated, as this tendency has continually converged toward the *laissez faire* orientation (Behdad, 1988a). The Iranian experience should provide a sobering lesson to those Islamic social reformers who believe in a genuine struggle toward an egalitarian society.

CONCLUSION

I have shown in this paper that the root of the property rights controversy in the Islamic reformist movement is the Islamic notion

of God's ultimate ownership. Some Islamic economists have found the notion of God's ultimate ownership and Islam's compassion for the poor and destitute as the ideological ground supporting their aim of establishing an egalitarian society under the Islamic banner. They regard the Islamic economic system as a just and humane alternative to socialism and capitalism. However, since in an Islamic society social relations, and from our perspective here, social relations of production, must be in accordance with Islamic law, the reformist view of an Islamic economy must be clearly within this confine. I have shown in this paper that the Islamic economic system proposed by these reformers is at most a capitalist economy with an interventionist-welfare state, where these reformers hope adherence to the Islamic spirit will bring about an Islamic 'social balance'. The blueprints of the proposed Islamic economy must, however, be sanctioned by the Islamic jurisprudential tradition. I have argued that even such a non-radical reform has not received, and it is doubtful that it will receive, approval from the community of *mujtahids*, who are the guardians of the Islamic law. The Islamic jurisprudential tradition is more forcefully explicit in the defence of private property rights than many Islamic social reformers are willing to realise. The Iranian experience is another concrete historical support of this claim.

NOTES

An earlier version of this paper was presented at a joint session of American Economic Association and Middle East Economic Association in the annual meeting of Allied Social Science Association, Chicago, 27–30 December 1987. I wish to express my gratitude to Bahram Tavakolian for his intellectual and moral support and for his many comments and corrections. I would also like to thank Warren J. Samuels, Paul King, Robin Bartlett, Cyrus Bina and Fatemeh Moghadam for their valuable comments. The opinions and remaining errors are mine. This study was supported by a Faculty Development Grant from Denison University.

1. Donohue and Esposito (1982) provide an anthology of works of Islamic political theorists and ideologues. For a review of Islamic political movements in various Muslim countries of Asia, see Esposito (1987).
2. For a survey of literature see Siddiqi (1981), and for a critical analysis see Kuran (1983 and 1986).
3. In 'Islamic Economics: A Utopian-Scholastic-Neoclassical-Keynesian Synthesis!' (1991) I have examined the methodological eclecticism of Islamic economics.

4. For example: 'And we desired to show favour unto those were oppressed in the earth, and to make them examples and to make them inheritors'. (Quran, XVIII:5) The Quran is quoted from Pickthall's translation.
5. Most of the strong condemnations of the wealthy and arrogant are seen in the earlier chapters of the Quran revealed in Mecca, where Muhammad was engaged in direct confrontations with the powerful lords of the Quraysh tribe. For example: 'Nay, but ye (for your part) honor not the orphan; And urge not the feeding of the poor; And ye devour heritage with devouring greed; And love wealth with abounding love.' (Quran, LXXXIX:17-20) It is, however, explicitly clear in the Quran that it is not wealth but its accompanying arrogance that is condemned.
6. A parallel may be drawn between the issues raised by the contemporary Islamic political movements and those generated by the Christian Humanist and Christian Socialist movements in the 1920s and 1930s, and Liberation Theology in this decade. See Segundo (1984), Gutierrez (1983), Berryman (n.d.), and the collection of essays in Tabb (1986), among others.
7. The Iranian revolution is a case in point. Political groups ranging from the proponents of a *laissez faire* market economy to the supporters of 'state capitalism' and 'cooperative socialism' have sought to carry on their debate on the terrain of Islamic ideology, each claiming to long for 'true Islam'. The central issue in these debates has been the limits of private property rights (Bakhash, 1984 and Behdad, 1988a).
8. In this paper I use the term 'reform' to mean a change in social conditions without implying that such a change is necessarily progressive from a historical perspective.
9. I have made Arabic nouns plural by adding 's' to the singular, e.g., *fuqih*s for *fuqaha*.
10. There are close similarities between Islam's notion of property rights and that of Medieval Christianity. The study of these similarities are beyond the scope of this paper. The readers may consult Spiegel's (1983, pp. 689, 695-9) extensive bibliography of the relevant works on property rights in Christianity.
11. Some of the arguments in this paragraph are from Behdad (1988a).
12. The economists who subscribed to this approach accept some government intervention in order to correct for 'market failures'.
13. It ranges between 2.5 and 10 per cent depending on the form of wealth. 'Unlike modern taxation, *zakat* is a flat rate and does not rise exuberantly on an ascending scale.' (Abdul-Rauf, 1979, p. 9). See also Kuran (1986, pp. 143-9).
14. The similarity of these thoughts with the conservative version of the post-Reformation Christian paternalistic ethic is striking. See Hunt (1979, pp. 21-3, 28).
15. Muhammad is quoted to have said: 'When one of you looks at someone who is superior to him in property or appearance, he should look at someone who is inferior to him.' (Mannan, 1986, p. 383).
16. Obviously, many Islamic economists disagree with this interpretation of *tawhid*. There are many explicit acknowledgements of inequality in the Quran and statements of Muhammad (see above).
17. Almost all Islamic economists interpret *tawhid* to mean brotherhood and

- cooperation. See, for example, Choudhury (1986, p. 8) and Naqvi (1981, pp. 48–9). Abu Sulayman, however, is among the few Islamic economists who extend the interpretation of *tawhid* to equality in property rights.
18. In Sadr's view, state ownership in capitalist economies, and private ownership in socialist economies are deviations from the working principles of these systems.
 19. MacPherson (1978, pp. 4–6) also classifies forms of ownership in a capitalist economy into similar categories: common, private and state.
 20. Except in the long-run in the perfectly competitive and monopolistic competitive markets, where demand is tangent to the average cost curve. See Choudhury (1986, pp. 33–9) for a mathematical treatment of price and output determination of a firm, in the neoclassical tradition, in an Islamic economy. For the application of neoclassical analysis in Islamic economics, see Behdad (1989).
 21. Here I have used *riba* as it appears in Arabic instead of usury which appears in translation.
 22. For definition of *riba* and an extensive treatment of it in major schools of *sunni* jurisprudence see Saleh (1986, Chapters 2 and 3). On ambiguities about the definition of *riba* see Rodinson (1978, pp. 14–15).
 23. Kahf (1973, p. 44) as quoted in Siddiqi (1981, p. 59) asserts that in an Islamic economy '[a]ll prices, whether of the factors of production or of products, stem out of this [market] mechanism, these prices are looked at as just or fair prices in this respect'.
 24. Muhammad is quoted to have said: 'Merchants are the messengers of this world and God's faithful trustees on Earth'. From Rodinson (1978, pp. 16–17) where a number of similar statements of Muhammad are quoted.
 25. Mannan (1986, pp. 123, 131–2), Siddiqi (1981, p. 59) and Ahmad (1977, p. 29). It is interesting to note that Ahmad claims since real interest earnings are subject to unpredictable fluctuations due to changes in the rate of inflation, such earnings are legitimate in Islam.
 26. On the economic conditions under Islamic rule in the Middle Ages see Rodinson (1973 and 1978, Chapter 3).
 27. In Sheik's view '[t]he State is the ultimate owner of all land . . . and the State would determine to allot [the surplus land] to other self-cultivators or to keep it as a State farm for grazing cattle' (1961, p. 181).
 28. Then the return on land is not 'rent' but profit in a capitalist sense. See Marx (1959, Part VI).
 29. It is interesting to note the rest of this sentence, keeping in mind that Sheikh is considered an 'extreme socialist' by M. N. Siddiqi (1981, 7). Sheikh continues ' . . . and the purpose which the society wants the moneyed people to serve, i.e., the purpose of creating employment, speed up economic development or tide over economic depression, will not be served'.
 30. Sadr (1978, pp. 226–7) points to the differences between *mukhabara* and *muzara'a*.
 31. These restrictions are enumerated in almost every treatise on Islamic economics. See, for example, Choudhury (1986, Chapter 1) and Mannan (1986, pp. 118–24, 150–4).

32. Labour law has been the issue of a heated jurisprudential debate in the Islamic Republic of Iran for seven years. Mannan (1986, 94), unable to find any support in Islamic jurisprudence for the right to collective bargaining, maintains that 'if both workers and employers are imbued with the values of Islam, the whole question of strikes and lockouts would be relatively unimportant'.
33. The Islamic Republic of Iran has not been able to resolve the jurisprudential issues related to the proposed Foreign Trade Bill in the past nine years. The Council of Islamic Guardians has rejected several versions of the Bill passed by the Parliament on jurisprudential grounds. The main objection of the Council is to the extensive role that the Bill provides for the state in the conduct of foreign trade. As the result of this and similar jurisprudential objections to the policies of the Islamic Republic, the formulation of the First Economic Plan of Iran has confronted a deadlock. See Behdad (1988a). Another interesting case is that the Central Bank of Iran was forced to liberalise its foreign exchange control policy under the pressure of export merchants who argued that according to Islam the state may not force merchants to surrender their exchange earnings to the Central Bank. See Behdad (1988b).
34. Some Islamic economists have, however, attempted to differentiate their ideal market conditions from the *laissez faire*, competitive model. For example, Naqvi (1981, pp. 66-7 and Chapter 9) argues that 'the model of competitive equilibrium may not be of much use' since external economies, and the social injustices resulting from the existing inequalities will require intervention of the government in an Islamic economy. Choudbury (1986, Chapter 3) in the neoclassical tradition regards the objective function of a firm to be cost minimisation subject to profit constraint.
35. For a critical study of the behavioural norms in an Islamic economy see Kuran (1983).
36. On the interest-free banks see Siddiqi (1983) and for a critique of it see Kuran (1986, pp. 149-58).
37. The idealised Islamic behaviour was hardly ever practiced in the fourteen centuries of Islam except, maybe, by Muhammad and his few Companions. See Rodinson (1978, Chapter 3).
38. Being a *shi'i*, Sadr has had a pronounced impact on the development of Islamic economic thought in Iran.
39. Mahdavy (1970) and Skocpol (1982) refer to the oil exporting countries as 'rentier states'.
40. In Iraq and Bahrain also, *shi'is* constitute the majority of population, but *shi'ism* is not the dominant sect. In Iran, however, even before the 1979 revolution, *shi'ism* was the official religion of the state.
41. Systematic efforts to formulate Islamic economics in Iran date back only to the recent revolutionary period. (See Behdad (1988a) and Katouzian (1983).) Bani Sadr's *Economics of Divine Unity* was first published abroad in 1978. This and later works on Islamic economics in Iran are deeply influenced by Sadr's book which was published in Iran in the 1970s. Earlier works by Taleqani, Shari'ati and Mutahhari (see Hosseini

(1987) lacked a systematic effort in dealing with Islamic economics or the Islamic economic system. The Constitution of the Islamic Republic of Iran provides a blueprint for the Iranian economy closely similar to Sadr's model. The debate about economic policies in the post-revolutionary period has been mainly around Sadr's interpretation of the role of the Islamic state in the economy.

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